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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS REPORTS ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 13. AUGUST, 1906. No. 3.

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THE LAWYERS' CO-OPERATIVE PUB. CO.,
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Actions for Injuries from Fright.

Timidity and weakness have been conspicuously exhibited by the courts in the treatment of cases in which recovery has been sought for injuries resulting from fright. The established principles of the law unmistakably sustain a right of action for physical injuries resulting from negligence or other tort, none the less clearly because those physical injuries consist of a wrecked nervous system than if they consist of broken bones. Injuries of the former class are often greater beyond all comparison than those of the latter. To deny recovery against one whose wilful or negligent tort has so terribly frightened a person as to cause his death, or leave him through life a suffering and helpless wreck, and permit a recovery for exactly the same wrong which results, instead, in a broken finger, is a travesty upon justice. The reasoning which can lead to such a result must be cogent indeed if it shall be entitled to respect.

All the decisions are agreed that mere fright which does not result in any traceable injuries to the physical system does not constitute in itself the basis of a cause of action. These cases may reasonably stand on the theory that there is no damage sufficient to require a remedy. On the other hand, all the cases agree that for a wilful tort the wrongdoer may be held responsible for such physical injuries as may result from a fright that his wrong has caused. Yet, at the same time, most of the courts have denied recovery in exactly the same class of cases if the wrongdoer was merely negligent, and not wilful. Nevertheless, some, if not all, of the reasons for sustaining such actions for fright caused by wilful tort apply to those for fright caused by negligence.

There are three somewhat clearly defined theories on which the various courts have based their decisions against recovery for physical injuries due to fright which was caused by negligence. The first of these is that, inasmuch as there is no right of action for fright alone, there cannot be any for the consequences of fright. This is stated as if it were a matter of course in Mitchell v. Rochester R. Co. 151 N. Y. 107, 34 L. R. A. 781, 56 Am. St. Rep. 604, 45 N. E. 354, where the court says: "Assuming that fright cannot form the basis of an action, it is obvious that no recovery can be had for injuries resulting therefrom. That the result may be nervous disease, blindness, insanity, or even a miscarriage, in no way changes the principle. These results merely show the degree of fright, or the extent of the damages." But the only sound reason why a right of action cannot be had for

fright alone is the lack of any very real damage, so that when there are added to the mere unpleasantness of being frightened serious physical injuries of the greatest magnitude, to say that there can be no recovery for these because there could be none for the mere sensation of being frightened does not seem to be an obvious conclusion. This is entirely to misconceive the situation, and treat the fright, which is but a link in the chain of causation, as the foundation of the cause of action, and regard the physical injury, which is the real basis of the action, merely as evidence of the degree of the fright. The remedy sought is for the injury sustained; and, where serious impairment of health and strength, and possibly a complete wrecking of the nervous system, has resulted, this is the injury for which action is brought. These injuries are not an incident of the fright, though the fright may be an incident of the injuries. Clear and cogent reasoning on the subject appears in the opinion of Kennedy, J., in the English case of Dulieu *v.* White [1901] 2 K. B. 669, where, in discussing the theory which denies an action for the results of fright because there can be none for fright alone, he says: "With all respect to the learned judges who have so held, I feel a difficulty in following this reasoning;" pointing out that damage is an essential element in a right of action for negligence, and that an action may not be based on fright if it is "only an unpleasant emotion of more or less transient duration." He concludes that, if "the fear is proved to have naturally and directly produced physical effects, so that the ill results of the negligence which caused the fear are as measurable in damages as the same results would be if they arose from an actual impact, why should not an action for those damages lie just as well as it lies where there has been an actual impact?" He also says that "direct bodily impact is, without resulting damage, as insufficient a ground of legal claim as the infliction of fright." There is as much reason in saying that, since there can be no cause of action based on mere bodily impact, there can be none for the serious damages which may result from the impact, as there is in saying that, since, there can be no damages for mere fright, there can be none for the physical consequences of the fright. To say either is very strangely to misconceive the relation of the element of fright or impact which is a mere incident in the occurrence to the real injuries which constitute the basis of the action.

Another theory often advanced by the courts is that the damages to the physical system caused by fright are too remote to constitute the basis of an action for causing the fright. But, with all deference for the learned judges who have advanced this argument, it deserves little respect. Every man of ordinary intelligence knows, either from his own personal experience, or from the observations of everyday life, that fright is one of the most potent causes of serious physical injuries. The court might well take judicial notice as a matter of common knowledge, as Thompson well declares in his work on Negligence, vol. 1, § 156, that such an injury as miscarriage is likely to result from a severe fright or nervous shock, yet case after case has been decided in respect to this very case of miscarriage, denying that it was a proximate result of the negligence which caused the fright. There seems to be an assumption in this reasoning that the fright, instead of being a mere incident or link in the chain of causation, is an intervening and independent cause which breaks the chain. To state the assumption in words sufficiently answers it. No court will deny that the proximate cause of a disaster may operate through successive instruments. The question is, Was there an unbroken connection or continuous operation between the wrongful act and the injury? It is decided, and no court would decide otherwise, that a man who frightens a horse, causing a runaway, is liable for injury to person or property, done by the horse as a result. The fright of the horse is not held to be an independent, intervening cause between the wrongdoer's act and the injury sustained. Yet, absurdly enough, some of the courts hold that fright is such an intervening, independent cause when the fright is not that of a horse, but that of the very person injured.

A third reason for denying recovery in these actions for physical injuries caused by fright is that of expediency or public policy because of the danger of fictitious or speculative claims, if it be admitted that any such cause of action can be entertained. It ought to be humiliating to any court to deny a clear case of justice for fear that

some one might bring action for an unjust claim. If it is conceivable, however, that the dangers to the public might be so great that even a just cause of action should be rejected, all will agree that this should be done with great hesitation. It ought not to be necessary to urge upon the courts that justice is the highest consideration, in their department of government at least. To leave a palpable and serious wrong unremedied solely because of the fear that some evil-minded person may in some other case impose upon the court is a confession of the breaking down of the system of justice. In this matter no such confession seems to be necessary. Every day the courts are sustaining claims of identically the same nature as those which they reject. Not only do they, without a dissenting voice, sustain actions for injuries resulting from fright where the wrongdoer was not merely negligent, but wilful, but, even as against negligent wrongdoers, they are constantly sustaining recoveries for injuries resulting from fright, if there is something, however infinitesimal, in the nature of bodily impact which can be seized upon as a peg on which to hang the substantial recovery for the results of fright. A wagon is struck by a car and pushed along a little distance, and this is held to constitute such an actual injury to the person of an occupant of the wagon, though his person was not in fact touched, as to give him a right to recover for the injuries which he sustained from fright. A woman at a railroad station throws herself down on the platform to escape a projecting timber on a passing train, and, though not hurt in the slightest by the act, the court on that peg hangs her right to damages for a nervous shock from her fright because she had been compelled to throw herself upon the platform. A person jumps from a wagon to escape harm, and, though not hurt by the jumping, is, because of that act, allowed to recover for the nervous shock caused by the fright. A railroad passenger in a collision is jarred against the seat, and, though not hurt by that, recovers damages for the nervous shock. A slight blow on the temple by an incandescent light globe, though amounting to nothing in itself, is made the peg on which to allow a recovery of damages for a miscarriage resulting from the fright and shock which were received at the same time. So the courts go on, notwithstanding all their fear of fake actions on fictitious claims, allowing recoveries for these injuries resulting from fright whenever there is a minute peg on which, as a fiction, they can base their decision, but denying any justice in exactly the same class of cases where the fiction is wanting. The danger from fictitious claims is as great in the one class of cases as the other. It is not creditable to the courts to base their decisions on unimportant accidents or incidents of the transaction instead of the real and substantial justice of the case.

It is unfortunate that the courts began to pass upon questions of this kind without due consideration, and so created precedents which have in many later cases prevented those judges who would otherwise have grasped the question with clear reason and sound judgment from dealing with the subject as they would have done if they had not felt themselves bound by prior decisions. Bad precedents are troublesome things, and it must be confessed that in a good number of jurisdictions they are strongly against the reason and right of this subject. But it is time for the courts to disentangle themselves from the bad reasoning which in the early cases led to bad precedents, which will stand in the way until overruled. But the principles governing the matter stand out plain, simple, and clear. A physical injury due to fright is none the less a physical injury than if it resulted from impact. Neither the impact nor the fright can itself create a cause of action without damage. Neither the impact nor the fright is itself an intervening and independent cause between the wrongful act and the damage done. The physical injuries which come directly from a wrongful act, whether it is through the medium of bodily impact and resulting changes in the physical condition, or by fright with resulting change and impairment of the physical condition, constitute the basis of a cause of action against the wrongdoer who produced the injury. The fear of fictitious actions of this kind is lost sight of by those inconsistent courts which adopt a fiction whenever possible on which to allow identically the same causes of action which they reject if they cannot find a fiction to interpose. Besides, at the present day the proof of physical injuries resulting from fright is not much more difficult or uncer-

tain than the physical injuries resulting from bodily impact. Indeed, a great number of the cases of the latter kind which the courts sustain are in every sense and to the fullest extent as uncertain of proof as those which result from fright. For the credit of jurisprudence it is time for the courts to apply the established principles of justice to cases of this kind as fully as to cases of any other kind.

Landlord's Right to Recover for Injury to Use and Occupation by Temporary Nuisance.

The New York court of appeals has evolved a doctrine which not only works great hardship upon the owners of property which is in possession of tenants during the time of the maintenance of a temporary nuisance in the neighborhood, but which seems needless and devoid of justice. A company organized for the generation of electricity operated its plant in such a way as to constitute a nuisance to property in the neighborhood. At the time of the creation of the nuisance the property was in possession of a tenant. When the lease expired it was renewed at a rental considerably less in amount than the landlord had previously been able to secure, and the court found that the diminished rental value was due very largely to the existence of the nuisance. The tenant brought an action for the injury to his use and occupation, and recovered in the case of Bly *v.* Edison Electric Illuminating Co. (N. Y.) 58 L. R. A. 500. Subsequently the landlord brought an action for injury to the rental value of his property, and the court denied him the right to recover on the theory that the right to recover for injury to the use and occupation had been settled, in the Bly Case, to belong to the tenant. Miller *v.* Edison Electric Illuminating Co. (N. Y.) 3 L.R.A. (N.S.) —. The practical result of this decision would seem to be to render the person responsible for the nuisance immune from liability for injury to the rental value. Certainly, if the tenant has secured a reduction of the rent because of the existence of the nuisance he cannot prove damages for injury to rental value to that extent, because, having been released from payment of the full rental, he cannot be held to have been injured. Upon the other hand, the direct loss has fallen on the landlord, and, if he is not able to recover, he will have to bear his loss and the wrongdoer go unscathed. That such a result is unjust seems self-evident, and it would seem that the result is attained through an erroneous view of the method by which the landlord's damages might be measured. The court seems to assume that the damage to the landlord is fixed at the time of the renewal of the lease at the diminished rental, and that the measure of damage would be the difference between the old and new rental for the period of the lease. This view would seem to be erroneous. As stated in the note to the Miller Case in 3 L.R.A.(N.S.)— it would seem that, in a true view, the measure of damages recoverable by the owner of premises, from a nuisance not of a permanent character, affecting the rental value of the property, would be the same whether he rents the premises after the creation of the nuisance or retains possession of them himself; and that the measure in either case would be the depreciation in the rental value caused by the nuisance for the time it actually continued. The terms of the new contract would not necessarily fix his damages, but would be merely evidence thereof, and he could recover the damage which he could prove only as long as the nuisance existed. Any injury by the extension of the lease beyond the termination of the nuisance could not be said to be due to the existence of the nuisance, but to the improvidence of the landlord in making a lease without providing for such termination. In this view, the danger that the creator of the nuisance might be subjected to a liability for a period beyond the continuance of the nuisance would disappear, and with it the only apparent substantial objection to the landlord's recovery. This view of the subject would afford the owner of premises affected by a nuisance not of a permanent character a practical means of protecting himself from ultimate loss by reason of the nuisance in case he desired to lease the premises; since he could agree with the tenant upon the rental value of the premises independently of the nuisance and then provide for a proper reduction from that rental for such time as the nuisance should exist, ultimately recouping himself by the recovery of damages for such period from the person responsible for the nuisance.

As suggested in the note, under the practical operation of the doctrine of the Miller Case it would seem that the owner of premises affected by a nuisance not of a permanent character, in order to protect himself from ultimate loss, must either find a tenant who is willing to pay the full rental value of the premises independently of the nuisance and take his chance of recovering damages from the creator thereof, or, if the rent is reduced on account of the nuisance, the owner must enter into some arrangement or understanding with the tenant whereby the latter shall maintain an action for his benefit, and such an arrangement would smack of champerty.

Limited Restraint on Alienation of Fee.

Another prominent example of blind adherence to precedent, and then mistaking the precedent, appears in the line of cases which hold valid a restraint for a short term of years upon the alienation of a fee simple in real estate. In Large's Case, 2 Leon. 82, 3 Leon. 182, a husband devised lands to his wife until one of his sons should become twenty-two years of age, and then the remainder of part of the lands to two sons, and the remainder of another part to two other sons, upon condition that, if any of his sons before the one mentioned became twenty-two years of age should go about to make any sale of any part of the lands so devised, he should forfeit his rights in them. Before the son mentioned became twenty-two one of the other sons leased that which belonged to him for sixty years, and so from period to period until two hundred forty years had ended. The question was whether this was a breach of the condition, and the court held that it was. Judge Christiancy, in Mandlebaum v. McDonell, 29 Mich. 78, 18 Am. Rep. 61, points out that the estate to which the condition was attached was but a contingent remainder, which was not to vest until the son mentioned arrived at the specified age and might never vest at all if he should die before that time. Under these circumstances there was no fee involved, and, therefore, the question of the validity of a restraint on alienation of the fee was not in the case; but the case is cited as authority for the proposition that such restraint is good, in the 7th edition of Sheppard's Touchstone, p. 130, and transferred from there into other text-books, until it found its way into the decisions; and there is quite a body of authority, and not a few courts, committed to that doctrine. But, as pointed out in Latimer *v.* Waddell, 3 L.R.A.(N.S.) —, this doctrine is entirely at variance with sound principle, since it is unthinkable that any restraint can be placed upon the power to dispose or otherwise deal with a fee-simple title. And in the note to that case it is shown that while, as already stated, many courts are committed to the doctrine that the restraint is valid, the doctrine has been severely criticized by the very courts which are committed to it, and has been repudiated by such a large number of the courts upon reasoning which is so conclusive that it would seem that the false doctrine would be entirely abandoned now that the error has been so completely pointed out, although there are expressions in some English and Canadian cases which appear to commit those courts to the doctrine. Pearson, J., in *Re* Rosher, L. R. 26 Ch. Div. 801, traces the error from Large's Case through Sheppard's Touchstone and other text-books, and says there has been no judicial decision to that effect, and it is a very curious thing that, although Littleton's book is more than 400 years old, and although Lord Coke died 250 years ago, there is not a single judicial decision to be found in the books showing that a limitation as to time, added to such a condition, makes it a valid condition. He then says that he should feel bound to follow the doctrine if he could find that it had been an accepted *dictum* that was likely to have affected diverse contracts and dealings, but he concluded: "I am bound to say that I cannot imagine that this supposed rule has ever been acted upon, because, to begin with, it is so vague that I am perfectly certain that no counsel capable of advising a client would have advised the client to act upon it without better information than we possess at present as to what the rule means;" and he refused to add an exception to the rule that a condition repugnant to the gift could not be annexed to the fee, for which he could find no authority, and the addition of which would only introduce uncertainty and confusion.

American Library Association.

Pursuant to a call in which twenty-four law libraries joined, there was formed at the conference of the American Library Association at Narragansett Pier, June 29th to July 6th, 1906, the "American Association of Law Libraries."

The purpose of this new organization is to develop and increase the usefulness and efficiency of the law libraries of the United States and Canada.

Those interested, to all of whom the membership is open, are invited to assist in the work by sending their names and addresses to the secretary-treasurer. It is proposed to hold meetings each year at the same time and place as the conferences of the American Library Association. Printed circulars outlining the programme for the coming year will be issued shortly, and forwarded to any address upon application.

The officers are:

President—A. J. Small, Iowa State Law Library, Des Moines, Iowa.

Vice President—Andrew H. Mettee, Library Company of the Baltimore Bar.

Secretary-Treasurer—Franklin C. Poole, Association of the Bar, 42 West 44th St., New York City.

Executive Committee—President, *ex officio;* Vice President, *ex officio;* Secretary-Treasurer, *ex officio;* Frank B. Gilbert, G. E. Wire, Frederick W. Schenk.

San Francisco Bar Association Library.

Shortly after the recent great conflagration in San Francisco, the Association of the Bar of New York city, in sympathy with their brethren of the Bar Association of San Francisco, offered assistance in the form of a large cash donation for re-establishing the library of the San Francisco Bar Association. The trustees of the latter association, at a meeting subsequently held, decided that, having their library partly covered by insurance, they did not feel justified in accepting the cash donation so generously offered by the New York Association, but would be glad to receive and preserve, as a memorial of the kindly feeling displayed, a copy of such Reports, Codes, and Statutes of the state of New York as might be available.

The New York Association thereupon shipped to the San Francisco Association a substantially complete set of New York Books, Reports, Statutes, Codes, Digests, Encyclopædias, and Text-Books, comprising about 1,400 volumes. This donation has been appropriately labeled so as to show the source from which it was received. The bar associations of some other cities have indicated a desire to furnish, as a like memorial, sets of their respective State Reports and Statutes.

Using these donations as a nucleus, the San Francisco Bar Association has already commenced the rehabilitation of its library.

The collection of law books belonging to this association, and destroyed by the fire, consisted of more than 12,000 volumes.

Index to New Notes

IN

LAWYERS' REPORTS ANNOTATED

2 L.R.A.(N.S.) pages 764-1195.

Among the New Decisions

Abuse of process. That the court from which an attachment is sued out is without jurisdiction is held, in Alistock *v.* Moore Lime Co. (Va.) 2 L.R.A.(N.S.) 1100, not to prevent defendant therein from maintaining an action for malicious abuse of process.

Action. An insurance company, subrogated to rights of insured against the party whose negligence caused the loss, is held, in Cunningham & Hinshaw *v.* Seaboard Air Line R. Co. (N. C.) 2 L.R.A.(N.S.) 921, to be the real party in interest, by whom the action against the wrongdoer must be brought.

A right of action for negligence in giving a lot owner an erroneous level for street grade is held, in Moore *v.* Lancaster (Pa.) 2 L.R.A.(N.S.) 819, not to run with the land.

Adultery. See HUSBAND AND WIFE.

Arrest. Avoidance of an officer by flight, to prevent an illegal arrest, is held, in Porter *v.* State (Ga.) 2 L.R.A.(N.S.) 730, not to be such an endeavor to escape as to justify an arrest without a warrant.

Associations. That no action will lie against an unincorporated association in the absence of legislative authority is declared in Karges Furn. Co. *v.* Amalgamated Woodworkers' Union (Ind.) 2 L.R.A.(N.S.) 788.

Attorneys. An attorney who collects money due on an assigned judgment, and pays it over to a stranger on demand, is held, in Moss Mercantile Co. *v.* First Nat. Bank (Or.) 2 L.R.A.(N.S.) 657, not to be estopped, as against an assignee, to show that he had recognized a paramount title.

Bills and notes. The right of a bona fide holder of a promissory note to fill in a blank left for an amount with the sum stated in the margin is sustained in Chestnut *v.* Chestnut (Va.) 2 L.R.A.(N.S.) 879, unless the blank was left by mistake.

That a note secured by mortgage is overdue is held, in Gardner *v.* Bacon Trust Co. (Mass.) 2 L.R.A.(N.S.) 767, not to prevent one holding it under an apparently valid transfer from the true owner from conferring a good title upon an innocent purchaser for value, although he secured the transfer by fraud.

Board of trade. The validity of a rule of a board of trade, requiring the submission to a committee of any dispute as to whom a margin shall be paid by the depositary, is upheld in Pacaud *v.* Waite (Ill.) 2 L.R.A.(N.S.) 672.

Boycott. Members of a combination to prevent the sale of a manufacturer's product are held, in Purington *v.* Hinchliff (Ill.) 2 L.R.A.(N.S.) 824, to be liable in damages.

Carriers. A misdescription, though without fraudulent intent, of the character of goods to be shipped, is held, in Bottum *v.*

Charleston & W. C. R. Co. (S. C.) 2 L.R.A. (N.S.) 773, to relieve the carrier from liability above the value of the goods as described.

The doctrine of *res ipsa loquitur* is held, in Firebaugh *v.* Seattle Electric Co. (Wash.) 2 L.R.A.(N.S.) 836, to be applicable to an injury to a passenger from the burning or blowing out of the controller on an electric car.

A presumption of negligence on the part of a street car company is held, in Chicago Union Traction Co. *v.* Mee (Ill.) 2 L.R.A. (N.S.) 725, not to arise from injury to a person through collision of the car with a wagon on the street.

A provision in a railroad ticket that, in case of dispute between passenger and conductor, the passenger must pay his fare and apply to the company for redress, is held, in Cherry *v.* Chicago & A. R. Co. (Mo.) 2 L.R.A.(N.S.) 695, to be unreasonable, and not binding on the passenger.

A passenger's relation to the carrier is held, in Glenn *v.* Lake Erie & W. R. Co. (Ind.) 2 L.R.A.(N.S.) 872, to have terminated, where, upon reaching his destination, he voluntarily loitered in the station house in quest of pleasure.

A railroad company is held, in Southern R. Co. *v.* Thurman (Ky.) 2 L.R.A.(N.S.) 1108, not to be liable for compelling a white person to enter a coach for colored people merely because, in the exercise of ordinary care, it mistook the race to which he belonged.

Liability to a passenger injured by collision with a trolley pole while riding on the running board of a street car, if he knew of the danger and could have avoided it by the exercise of reasonable care, is denied in Burns *v.* Johnstown Passenger R. Co. (Pa.) 2 L.R.A.(N.S.) 1191.

Continuance. The right to force one accused of crime to trial in the absence of his witnesses, upon the theory that they will be summoned and examined if they arrive before verdict, and, if not, their testimony may be made the basis of a motion for a new trial, is denied in Cremeans *v.* Commonwealth (Va.) 2 L.R.A.(N.S.) 721.

Contracts. A person for whose benefit a contract is made between other parties is held, in Smith *v.* Pfluger (Wis.) 2 L.R.A. (N.S.) 783, to have the right to enforce it, regardless of his relations to the parties, of his knowledge of the transaction at the time of its occurrence, and of his formal assent prior to the commencement of action.

See also INTOXICATION; PATENTS.

Copyright. The right to maintain a common-law action for infringement of a copyright is sustained in Walker *v.* Globe Newspaper Co. (C. C. A. 1st C.) 2 L.R.A.(N.S.) 913.

Corporations. A corporation is held, in Brookhouse *v.* Union Publishing Co. (N. H.) 2 L.R.A.(N.S.) 993, under the circumstances of the case, not to be chargeable with notice that drafts and certificates of deposit payable to its treasurer as guardian of an infant, indorsed by him as such and deposited under his direction to the company's bank account, had been misappropriated by him.

See also LIBEL; PLEDGE.

Criminal law. A statute permitting the commission of crime to be enjoined is held, in *Ex parte* Allison (Tex.) 2 L.R.A.(N.S.) 1111, not to violate the constitutional provision against second jeopardy.

Damages. The value of the land is held, in Doty *v.* Doty (Ky.) 2 L.R.A.(N.S.) 713, to be a proper measure of damages for breach of a parol contract to convey real estate where the vendor has received the consideration for his promise.

Damages for wilful refusal of a telegraph company to pay over money to one entitled thereto are held, in Western U. Teleg. Co. *v.* Wells (Fla.) 2 L.R.A.(N.S.) 1072, to include compensation for bodily pain and suffering and mental pain and anguish consequent thereon.

Mental distress and bereavement of the father are held, in Kelley *v.* Ohio River R. Co. (W. Va.) 2 L.R.A.(N.S.) 898, to be an element of damages in an action in his behalf for the death of his son.

Death. The right to recover on circumstantial evidence for the death of a switchman killed at a switch, on the theory that his foot was caught between the rails because of defective blocking, is denied in Neal *v.* Chicago, R. I. & P. R. Co. (Iowa) 2 L.R.A.(N.S.) 905, where the circumstances shown were equally consistent with the theory that he slipped on icy ground and fell in front of the car, or that he attempted to board the moving train and fell under it.

Diligent inquiry is held, in Modern Woodmen of America *v.* Gerdom (Kan.) 2 L.R. A.(N.S.) 809, to be necessary to raise a

presumption of death from seven years' unexplained absence of a person.

See also DAMAGES.

Divorce. See HUSBAND AND WIFE; INFANTS.

Easements. The right to lay pipes through land "for conveying water" from a source of supply "to the city reservoir" is held, in Gray *v.* Cambridge (Mass.) 2 L.R.A.(N.S.) 976, not to give a right to use the pipes as a part of the distributing system of the city after abandonment of reservoir, but to include the right to convey the water to a high-pressure stand pipe constructed in connection with and as a part of the reservoir.

The easement in a bridge shown on a plat by reference to which lots are purchased is held, in Oney *v.* West Buena Vista Land Co. (Va.) 2 L.R.A.(N.S.) 832, to be lost by failure of the lot owners, for an unreasonable time, to make repairs, so that an abandonment may be presumed.

The intervention of a section of highway between a parcel of land to which a private right of way is claimed as appurtenant, and the land over which it is claimed, is held, in Graham *v.* Walker (Conn.) 2 L.R.A. (N.S.) 983, not to prevent the acquisition of such right by prescription.

Election. The death of a widow within the time allowed her by a statute to elect whether to take her dower or a legacy is held, in Flynn *v.* McDermott (N. Y.) 2 L.R.A.(N.S.) 959, to vest a right to the legacy in her executor.

Electrical uses. A corporation engaged in the generation of electricity is held, in Ryan *v.* St. Louis Transit Co. (Mo.) 2 L.R.A.(N.S.) 777, to be bound, upon contracting with a stranger for the performance of work within its buildings, to keep its wires so protected and insulated as to be safe for the latter's workmen.

Elevators. One maintaining a passenger elevator for use of tenants and their customers is held, in Edwards *v.* Manufacturer's Building Co. (R. I.) 2 L.R.A.(N.S.) 744, not to be a common carrier, but only bound to exercise reasonable care.

Eminent domain. The generation of electrical power by a private corporation under no obligations to serve the public is held, in State *ex rel.* Tacoma I. Co. *v.* White River P. Co. (Wash.) 2 L.R.A.(N.S.) 842, not to be a public use for which the power of eminent domain may be exercised.

Evidence. A statute declaring that certain facts shall be presumptive evidence of fraud in a criminal case is held, in Banks *v.* State (Ga.) 2 L.R.A.(N.S.) 1007, not to be an assumption of judicial functions by the legislature.

Homicide. One who, by interfering in aid of his insane parent whom officers are attempting to arrest, frees his hands and enables him to kill one of the officers, is held, in Johnson *v.* State (Ala.) 2 L.R.A. (N.S.) 897, to be guilty of murder.

The death of a bystander struck by a ball fired at accused in self-defense, by one on whom accused was attempting to commit a robbery, is held, in Com. *v.* Moore (Ky.) 2 L.R.A.(N.S.) 719, not to make accused guilty of murder.

Husband and wife. The right of the husband to any part of his wife's personal property under a devise and bequest of all the wife's estate, real and personal, to another, "subject to the legal rights of her husband," is denied in *Re* Folwell (N. J. Err. & App.) 2 L.R.A.(N.S.) 1193.

A wife is held, in State *v.* Woodrow (W. Va.) 2 L.R.A.(N.S.) 862, not to be a competent witness against her husband in a prosecution for murder of an infant child, although she was wounded at the same time.

A wife is held, in Sexton *v.* Sexton (Iowa) 2 L.R.A.(N.S.) 708, to be competent to testify to acts and declarations of her husband, tending to show existence, and subsequent loss, of his affection for her.

Bringing another woman into the home, in connection with other circumstances, is held, in Craig *v.* Craig (Iowa) 2 L.R.A. (N.S.) 669, to constitute cruel and inhuman treatment.

The offense of open and notorious adultery is held, in People *v.* Salmon (Cal.) 2 L.R.A.(N.S.) 1186, not to be committed by persons living quietly together as if they were husband and wife, with nothing to excite suspicion that their intercourse is adulterous.

Incompetent persons. An action is held, in Wiesman *v.* Donald (Wis.) 2 L.R.A. (N.S.) 961, not to be subject to dismissal because brought by an insane person in his own name, unless the statute so provides.

Infants. The legal obligation of a father to support his minor children is held, in Spencer *v.* Spencer (Minn.) 2 L.R.A.(N.S.) 851 not to be impaired by a decree of divorce giving the custody of the children to the mother.

Injunction. The right of one whose business was injured by the maintenance of a police patrol at the entrance of a passageway leading to houses of prostitution to an injunction is denied in Pon *v.* Wittman (Cal.) 2 L.R.A.(N.S.) 683.

An injunction to restrain the stationing of officers near a place where liquor is sold under a tax certificate, to warn intending patrons that the place is disorderly and subject to raid, was denied in Delaney *v.* Flood (N. Y.) 2 L.R.A.(N.S.) 678.

Insurance. A woman whose husband is capable of supporting her is held, in Caldwell *v.* Grand Lodge A. O. U. W. (Cal.) 2 L.R.A.(N.S.) 653, not to be dependent upon a member of a benefit society who advised her to marry, and promised to take care of her while he lived, and contributed to her support.

A provision in a life insurance policy, declaring it incontestable from date, is held, in Reagan *v.* Union Mut. L. Ins. Co. (Mass.) 2 L.R.A.(N.S.) 821, to be void as against public policy, so far as it includes fraud in procuring the policy.

Interest. A statute making it illegal to take more than a specified rate of interest on loans of less than a certain amount on household goods and tools of certain trades, while permitting any rate which may be agreed upon in other cases, is held, in *Re* Sohncke (Cal.) 2 L.R.A.(N.S.) 813, to be unconstitutional because not uniform in operation.

Intoxicating liquors. The taking of a bill of lading in the name of the seller, and attaching a draft thereto, is held, in Hamilton *v.* Joseph Schlitz Brew. Co. (Iowa) 2 L.R.A.(N.S.) 1078, not to make the destination the place of sale of liquor, if the intention of the parties is otherwise; and the fact that the sale would be illegal if made in the state of destination is held to be relevant on the question of intention.

Intoxication. To relieve one from a contract made while intoxicated, it is held, in Kuhlman *v.* Wieben (Iowa) 2 L.R.A.(N.S.) 666, that he must have been so completely under the influence of intoxicants as not to be able to understand the effect and consequences of the business transaction.

Judgment. A resolution of a city to pay judgments in the order of priority is held, in Beadles *v.* Fry (Okla.) 2 L.R.A.(N.S.) 855, not to excuse the judgment creditor from suing out an execution, or reviving the judgment within the statutory period.

A judgment in favor of a municipal corporation in an action against it and a telephone company for injuries caused by a broken wire maintained by the city on the company's poles, as to which the company was not negligent, is held, in Hayes *v.* Chicago Teleph. Co. (Ill.) 2 L.R.A.(N.S.) 764, to prevent a recovery against the company.

Landlord and tenant. A lessee of a building is held, in Taylor *v.* Finnigan (Mass.) 2 L.R.A.(N.S.) 973, not to be constructively evicted by the revocation of his license to conduct the premises as a place of public amusement because of inability to comply with requirements of public officials as to additional exits.

Libel. A complaint for libel in charging one with being distributing agent for a person assumed to have secured a public office through bribery is held, in Scofield *v.* Milwaukee Free Press Co. (Wis.) 2 L.R.A.(N.S.) 691, not demurrable, since the words are capable of a libelous and defamatory meaning.

The right of a corporation to sue for a libel or slander upon it in the way of its business or trade is affirmed in Gross Coal Co. *v.* Rose (Wis.) 2 L.R.A.(N.S.) 741.

License. One who has placed a building on land under a parol license is held, in Shipley *v.* Fink (Md.) 2 L.R.A.(N.S.) 1002, to be entitled to a reasonable time in which to remove it without unnecessary injury, when the property passes to the grantee from the licensor.

Requiring the procurement of a license to conduct an employment agency is held, in People *ex rel.* Armstrong *v.* Warden N. Y. City Prison (N. Y.) 2 L.R.A.(N.S.) 859, to be within the police power.

Limitation of actions. That the statute of limitations does not, under ordinary circumstances, commence to run against a suit in the nature of a creditor's bill until the claim has been reduced to judgment, is held in Ainsworth *v.* Roubal (Neb.) 2 L.R.A.(N.S.) 988.

Malicious prosecution. The dismissal of a prosecution by a justice of the peace for failure of the prosecutor to introduce evidence against accused is held, in Graves *v.* Scott (Va.) 2 L.R.A.(N.S.) 927, to be a sufficient termination of the prosecution to sustain a suit for malicious prosecution.

Master and servant. One furnishing a messenger for hire is held, in Haskell *v.* Boston Dist. Messenger Co. (Mass.) 2 L.R.A.(N.S.) 1091, not to be liable, in the absence of negligence, for loss, through dishonesty of the messenger, of property intrusted to him by a patron.

A master is held, in Anderson *v.* Columbia Improv. Co. (Wash.) 2 L.R.A.(N.S.) 840, not to be bound to instruct an employee as to the danger of felling tall trees.

Mines. The implied reservation of a right to subjacent support for the surface under a conveyance of the coal beneath the surface is denied in Griffin *v.* Fairmount Coal Co. (W. Va.) 2 L.R.A.(N.S.) 1115.

Municipal corporations. An ordinance absolutely prohibiting the opening or working of stone quarries within certain prescribed limits, without reference to injury to the public or to other property, is held, in *Re* Kelso (Cal.) 2 L.R.A.(N.S.) 796, to be a denial of due process of law.

The liability of a municipal corporation for the death of an employee from injuries inflicted in the performance of an *ultra vires* act is denied in Switzer *v.* Harrisonburg (Va.) 2 L.R.A.(N.S.) 910.

Name. One married under his paternal family name is held, in De Renzes *v.* Palestine (La.) 2 L.R.A.(N.S.) 1089, to have the right to bring a suit for divorce under his full paternal and maternal name, where, in the country of his nativity, a child bears both names.

Negligence. A subcontractor undertaking to furnish steel frame work for a tank is held, in Galbraith *v.* Illinois Steel Co. (C. C. A. 7th C.) 2 L.R.A.(N.S.) 799, not to be liable to a property owner for losses due to collapse of the tank, although it would not have resulted but for his failure to perform the work according to contract.

A railroad engineer is held, in Fisher *v.* Chesapeake & O. R. Co. (Va.) 2 L.R.A.(N.S.) 954, not to be negligent, as matter of law, in remaining at his post in order to save property of the company.

One who directed a servant to recapture a chicken is held, in Malony *v.* Bishop (Iowa) 2 L.R.A.(N.S.) 1188, not to be liable for the breaking of a window caused by the chicken's flying against it in its endeavors to elude the pursuer.

See also CARRIERS.

New trial. That no vested right exists in a rule of practice giving a right to a new trial in case of death of the presiding judge before signing the bill of exceptions; and that the legislature may provide for signature of the bill by another judge, is declared in Johnson *v.* Smith (Vt.) 2 L.R.A.(N.S.) 1000.

Patents. Engaging, at a large salary, to take charge of the engineering and manufacturing department of a corporation, and assuming the duty of improving its product and devising and designing articles for its benefit, are held, in Pressed Steel Car Co. *v.* Hansen (C. C. A. 3d C.) 2 L.R.A.(N.S.) 1172, not to require one, as a matter of law, to assign to the corporation patents for articles so designed.

An agreement to assign to the purchaser of a patent future inventions relating thereto is held, in Reece Folding Mach. Co. *v.* Fenwick (C. C. A. 1st C.) 2 L.R.A.(N.S.) 1094, not to be against public policy.

Pledge. A written assignment is held, in French *v.* White (Vt.) 2 L.R.A.(N.S.) 804, to be necessary to effect a pledge of corporate stock, under a statute providing that, for such purpose, the transfer must be by "assignment and delivery," accompanied by a memorandum upon the stock book.

Proximate cause. An aggravation of heart trouble by sitting up all night is held, in Ingraham *v.* The Pullman Co. (Mass.) 2 L.R.A.(N.S.) 1087, not to be the proximate result of a carrier's refusal to furnish a passenger with a drawing room on a certain train, where it offered to supply one on a train leaving a few hours later, or other sleeping accommodations on the same train.

Receivers. The right to give the expense of a receivership established in aid of execution against a private partnership priority over the claims of mortgage creditors is denied in First Nat. Bank *v.* Cook (Wyo.) 2 L.R.A.(N.S.) 1012.

Religious societies. A member of a church is held, in Harris *v.* Brown (Ga.) 2 L.R.A.(N.S.) 828, to have such an inter-

est in property conveyed in trust for the purposes of the church as to enjoin an unauthorized sale of the property by the church authorities.

Sales. See DAMAGES.

Specific performance. Failure of the trustee holding the naked legal title to sign a contract for conveyance is held, in Kuhn *v.* Eppstein (Ill.) 2 L.R.A.(N.S.) 884, not to prevent specific performance if signed by the owner of the beneficial interest.

Statute of frauds. That the period covered by an agreement extends only one year from the time for commencement of performance is held, in Chase *v.* Hinkley (Wis.) 2 L.R.A.(N.S.) 738, not to take it out of the statute of frauds.

Taxes. Merchandise shipped by a nonresident manufacturer in bulk to a storage company, and stored by it awaiting orders for distribution to purchasers, is held, in Merchants' Transfer Co. *v.* Board of Review (Iowa) 2 L.R.A.(N.S.) 662, to be subject to local taxation.

Claims of a foreign corporation, in definite, tangible form, are held, in Monongahela R. C. C. & C. Co. *v.* Board of Assessors (La.) 2 L.R.A.(N.S.) 637, to be subject to taxation.

Telegraphs. See DAMAGES.

Trade name. The acquisition of a word as a trade name in a particular locality is held, in Cohen *v.* Nagle (Mass.) 2 L.R.A. (N.S.) 964, not to be prevented by its previous use by other persons in a distant section of the country.

Witnesses. See HUSBAND AND WIFE.

New Books.

"Supplement to Abbott's New York Cyclopedic Digest, 1900 to 1905." (New York Law Book Co., New York.) 2 vols. $15.

"Everybody's Law Book." By J. Alexander Koones. (Hitchcock Publishing Co., New York.) Law Style Binding, $3. Half Morocco, $2.50.

"Hand-Book of Corporation Law." By Richard S. Harvey. (Bleyer Law Publishing Co., New York.) $6.

"Luzerne County Legal Register Reports." (Pennsylvania) Edited by Joseph D. Coons and W. E. Wood. (E. B. Yordy Co., Wilkesbarre, Pa.) Vol. 12. $5.25.

"Index to Gammel's Laws, 1822–1905." (Texas) Arranged by G. P. Finlay and D. E. Simmons. (H. P. N. Gammel, Austin, Texas.) $5.

"Local Government in Counties, Towns, and Villages." By J. Archibald Fairlie. American State Series. (Century Co., New York.) $1.25.

"Four Year Supplement to the United States Catalog." (H. W. Wilson Co., Minneapolis, Minn.) $12.50.

"Lawyers' and Bankers' Directory for 1906." (Sharp & Alleman Co., Philadelphia.) $5.

"The Tax Law of New York State." (Baker, Voorhis, & Co., New York.) $1.

"Statutory Revision of the Laws Affecting Banks, Banking and Trust Companies, Enacted in 1892, and Amended in 1893–1906." (New York) Prepared by Andrew Hamilton. (Banks & Co., Albany.) Buckram, $2. Paper, $1.50.

"Penal Code of New York State." 1906. By C. D. Rust. 20th ed. (Matthew Bender & Co., Albany.) $3.50.

"Penal Code of New York State." 1906. By Amasa J. Parker, Jr. (Banks Law Publishing Co., New York.) $2.

"New York Insurance Law." By Andrew Hamilton. (Banks & Co., Albany.) Buckram, $2. Paper, $1.50.

"Reports of New York Court of Appeals Cases." October 24, 1905, to February 6, 1906. With notes. By Edwin A. Bedell. (James B. Lyon Co., Albany.) $2.50.

"Code of Criminal Procedure of New York State." By C. D. Rust. 20th ed. (Matthew Bender & Co., Albany.) $3.50.

"Code of Civil Procedure of New York State." By G. Chase. (Banks Law Publishing Co., New York.) $3.50

"Code of Criminal Procedure of New York State." By Lewis R. Parker. (Banks Law Publishing Co., New York.) $2.

"Select Cases and Other Authorities on the Law of Property." 2d ed. By J. Chipman Gray. (George H. Kent, Cambridge, Mass.) $3.50.

"The Grand Jury Considered from an Historical, Political, and Legal Standpoint, and the Law and Practice Relating Thereto." By G. J. Edwards, Jr. (George T. Bisel Co., Philadelphia.) $3.

"A Treatise on Criminal Law and Crim-

inal Procedure." By C. Egbert Chadman. (Frederick J. Drake & Co., Chicago.) $1.50.

"The Law of Partnership." By Francis Marion Burdick. 2d ed. (Little, Brown, & Co. Boston.) Buckram, $3. Sheep, $3.50.

"Municipal Government of the City of New York." By Abby G. Baker and Abby H. Ware. (Ginn, Boston.) 90 cts.

"Time, in Practice, and Index to Forms and Precedents in the Michigan Reports." By Albert Trask. (Seemann & Peters, Saginaw, Mich.) $1.

"Digest of the Bankruptcy Decisions." Vols. 1 to 14, American Bankruptcy Reports. By Melvin T. Bender and Harold J. Hinman. (Matthew Bender & Co., Albany.) $5.

Hinds, "Constitution of United States, Jefferson's Manual, and Rules of House of Representatives." 1906. (U. S. Office of the Superintendent of Documents, Washington, D. C.) $2.50.

Recent Articles in Law Journals and Reviews.

"The Law of Bank Checks (Practical Series)."—23 Banking Law Journal, 429.

"Negotiation of Checks by Traveling Salesmen."—23 Banking Law Journal, 436.

"False Bills of Lading."—23 Banking Law Journal, 441.

"Suffrage Limitations in Louisiana."—21 Political Science Quarterly, 177.

"The Philippines and the Filipinos."—21 Political Science Quarterly, 288.

"The Rights of Creditors of a Municipal Corporation when the State has Passed a Law to Abolish or Alter It."—12 Virginia Law Register, 175.

"The New Act Concerning Demurrers to Evidence."—12 Virginia Law Register, 195.

"Statutory Regulation of Employer and Employee."—63 Central Law Journal, 43.

"Some Observations Concerning Cautionary Instructions to Juries."—63 Central Law Journal, 4.

"Can Stock with Exclusive Voting Power Be Treated as a Trust?"—18 Green Bag, 383.

"Joinder of Actions in Fire Insurance Litigation."—18 Green Bag, 392.

"Marriage in Old Rome."—18 Green Bag, 402.

"Medical Books in Expert Evidence"—54 American Law Register, 327.

"The Doctrine of Previous Jeopardy."—3 Criminal Law Journal of India, 145.

"Presumptions in Actions for Injuries by Undue Action of Inanimate Things through Causes Unknown."—63 Central Law Journal, 27.

"Promotion of Hearsay Evidence."—10 Law Notes, 64.

"How Far Must a Wife Follow Her Husband."—10 Law Notes, 69.

"Mode of Obtaining Immunity in Return for Self-Incriminating Evidence."—32 National Corporation Reporter, 683.

The Humorous Side.

A LUCID LETTER.—The following letter from a client to a lawyer in the Indian territory is sent us as a contribution:

My Dear Sir:—

Your letter reached several weeks ago, in particular of the case of ——— as minor, and you have said that you will give advice for that case. And also we will give you the clear evidence in regard to it, especially to acknowledge to obtain successful by making lawfully to suit. But there is no doubtless that you will convince in accordance to the assurance i-made by us.

Therefore we desire to make positive statement for that matter, we have seen Mr. ——— and he was refuse to comply with what the two men who have duly appointed to settle over that case, and one of the witnesses was called to hear during in our conversation, but Mr. ——— replyed, thus he said, yes for so I borrowed the money for my own use, I did not deposite at all, but I bought the goods to trade. And one of the witnesses was asked, does the money belong to a minor? then deposited by your own will with interest on every dollars. No, was the reply, do you think that any person doing that way could escape? What, no, I did not regard to the entire provision of the Law of the U. S. Government, and we are convineed that you could make arrangement. Thought that you have good experience, that your profession is appearing alibi. As in consciquence such request for settlement was failed. The rea-

son why she want to receive for valuable estate or for money either for the whole amount of $200.00 and his farm about 7½ acre. But it is not good for arable.

But the word was received from him and said. That he had done of the two horses let to go. But whats the reason that he is still in holding yet? But all parties of the Cherokee people, saying that Mr. ——— shall have to pay for the money wasted in conciquence that in considerat expense or without economy was applied by him.

And we shall be anxious to hear from you at an early date and we hope that any advice will reach to our hand as soon as possible.

Conclusion. Two grey horses 6 hands high and 7½ acre farm.

Signed ———

———There is a very dangerous river between us and it, that is to say a United States Commissioner. A circumstance of vast habitation, distance and accessibility to any relief whatever.

To all of which we humbly submit.

Signed ———

A DOG STORY OF 1587.—A delightful dog story has been exhumed from the misty past, and is now preserved in the records of the "Southampton Court Leet," which have just been published. It dates from 1587, and must be told in the quaint terminology of the period. "Item we present yt at the tyme of our sytting ther hath ben complaynt made of another dogg betwene a masty & a mungerell, of Peter Quoyte's which hath strong qualyties by himselfe which goyng lose abrode doth many tymes offend the neyghbors & wyll fetch owt of ther howses whoe peces of meate, as loynes of mutton & veal & such lyke & a pasty of venson or a whole pownde of candells at a tyme, & will not spoyle yt by the way but cary yt whole to his masters howse. which being a profytable dogg for his master, yet because he is offensyffe to many yt is not sufferable. Wherfor his master hath forfeyt for every tyme 3s 4d. And be yt comaunded to kepe him tyed or to putt him away upon payn to forfeyte for every tyme he shal be found in the streets 3s 4d." Peter Quoyte's larder no doubt was as bare thereafter as Mother Hubbard's.—London "Chronicle."

VOT DE DEEFERUNCE.—A little Jew merchant of the Bowery, whose head looked several sizes too large for his body was the plaintiff in a New York court recently against another Jew, a Philadelphia auctioneer who had taken some of the merchant's goods to sell at auction and had failed to account for them. The plaintiff's proof of the delivery of the goods to the defendant had been prepared with great particularity. He had carefully itemized invoices of all the goods shipped, and swore unhesitatingly that he personally packed every article named and with his own hands wrote down the list of the articles at the time he packed them for shipment. If he told the truth his own testimony made complete and perfect proof of his case, and, to nail the thing solid, he emphasized the point that he himself had personally attended to the shipment of the goods and the making of the invoice. Still further to strengthen his case, he offered a receipt for three boxes of goods, signed by the defendant. But while this, unfortunately for the plaintiff, did not specify what goods were contained in the boxes, it did bear date a week or two earlier than the date of the invoices. Defendant's attorney asked if this receipt was given on the day the goods were delivered, and the plaintiff said "Yes.!" Then says the attorney, "Didn't you testify that the invoices were made on that day? and the poor plaintiff had to admit that he did. But tnen inquired the lawyer, "How does it happen that they are dated a week or two later?" The little Jew wriggled and perspired, but finally answered with desperation: "My brooder,—my brooder, he make the mistake when he write the invoice." "Ah!" pursued the persistent attorney, " Your brother made the invoices, did he? Then what made you swear so positively a few minutes ago that you did it yourself, with your own hands?" The little fellow, seeing no way of escape, turned toward the judge, and with pitiful look and appealing voice exclaimed: "Vot de deeferunce, ain't he ma brooder?"